



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 7, 2004

Ms. Paige Glicksman
Assistant City Attorney III
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2004-7591

Dear Ms. Glickman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 211371.

The City of Plano (the "city") received a request for the reports and statements regarding an incident at a public pool. You indicate that you have released all requested information other than the home telephone numbers of the two employees involved in the incident. We understand you to claim that the home telephone numbers are excepted from disclosure under section 552.117 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.117(a)(1) of the Government Code excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who timely requests that this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time that the request for the information is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117(a)(1) on behalf of a current or former employee who made a request under section 552.024 to keep the information confidential prior to the date on which the city received the request for information. The city may not withhold information under section 552.117(a)(1) for a current or former employee who did not make a timely election under section 552.024 to keep the information confidential.

According to the documentation you provide, the two employees at issue requested to keep their home telephone numbers confidential pursuant to section 552.024 prior to the date of the city's receipt of the request for information. Thus, the city must withhold the home telephone numbers of the two employees at issue under section 552.117(a)(1).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Caroline E. Cho', with a stylized, flowing script.

Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 211371

Enc. Submitted documents

c: Ms. Joanne L. Cross
7309 Milton Lane
Plano, Texas 75025
(w/o enclosures)